Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of	)	
	)	
Petition of Cox Virginia Telcom, Inc.	)	CC Docket No. 00-249
Pursuant to Section 252(e)(5) of the	)	
Communications Act for Preemption	)	
Of the Jurisdiction of the Virginia	)	
State Corporation Commission	)	
Regarding Interconnection Disputes	)	
With Verizon-Virginia, Inc. And	)	
For Arbitration	)	

PETITION FOR PREEMPTION AND ARBITRATION OF COX VIRGINIA TELCOM, INC.

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SUMMARY

Shortly after the Virginia Commission refused to arbitrate the interconnection dispute between WorldCom, Inc. and Verizon Virginia, Inc. ("VZ-VA") under federal law, that agency dismissed Cox Virginia Telcom, Inc.'s similar petition for arbitration with VZ-VA. In this Petition, Cox seeks the FCC's preemption of Virginia's jurisdiction just as WorldCom has done in its FCC petition filed October 26, 2000. In the Motion filed contemporaneously with this Petition, Cox asks the FCC to combine for hearing purposes this Petition with WorldCom's petition. Cox suggests in the Motion several procedures for FCC adoption in conducting this single arbitration proceeding.

The FCC should preempt Virginia's jurisdiction pursuant to Section 252(e)(5) of the Act because the Virginia Commission has refused to carry out its duties under the Act, offering instead only to arbitrate in accordance with state law. Cox cannot pursue such a course which would not lead to a single, unified interconnection agreement that would determine both state and federal rights and obligations.

In this Petition, Cox identifies eleven issues that are in dispute and seeks the FCC's resolution of them. The first ten disputed issues fall into four problem areas. First, VZ-VA attempts to impose an obligation on Cox that the Act only imposes on incumbents. Second, VZ-VA tries to force Cox to waive a right granted to competitors under the Act. Third, VZ-VA seeks to avoid obligations imposed by the Act on incumbents. Fourth, VZ-VA attempts to assume authority over Cox's behavior that is neither granted nor permitted by the Act.

The eleven disputed issues are summarized as follows. 1. VZ-VA demands that Cox pay for VZ-VA's delivery of VZ-VA's traffic to Cox's network. 2. VZ-VA would

require Cox to eliminate its mileage-sensitive element as a component of its entrance facilities rate. 3. VZ-VA would impose collocation requirements on Cox's facilities that only apply to incumbents under the Act. 4. VZ-VA wishes to dictate traffic volume on a trunk group used by Cox to send traffic to VZ-VA's tandem switch for termination to a VZ-VA end office. 5. VZ-VA seeks to avoid paying reciprocal compensation to Cox for traffic delivered by Cox to Internet service providers and wishes to impose infeasible methods for determining whether traffic is local or toll. 6. VZ-VA would require Cox to engineer or forecast, or both, VZ-VA's trunk groups. 7. VZ-VA plans to monitor or audit Cox's access to and use of customer proprietary network information obtained through the interconnection agreement. 8. VZ-VA tries to place caps on the rates and charges that Cox may assess for its services, facilities and arrangements. 9. VZ-VA would adopt a statement of generally available terms as the default mechanism upon the interconnection agreement's termination. 10. VZ-VA seeks to terminate Cox's access to VZ-VA's OSS if Cox fails, allegedly, to cure a default under the contract. 11. The parties disagree as to whether the interconnection agreement should contain rates, terms and conditions regarding transit traffic adopted from another agreement. The last issue is deemed to be strictly a legal matter.

Additionally, Cox provides a table of issues, labeled as "Open," which have not been resolved by the parties through negotiation but upon which Cox believes agreement can be reached. Such negotiations will continue, and Cox reserves the right to amend this Petition to seek FCC resolution of any "Open" issue not so resolved. Two previously disputed issues were settled through negotiations conducted between the filing of the Virginia arbitration petition and the filing of this Petition.

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PETITION FOR PREEMPTION AND ARBITRATION OF COX VIRGINIA TELCOM, INC.

Cox Virginia Telcom, Inc. ("Cox"), pursuant to Section 252(e)(5) of the Telecommunications Act of 1996 (the "Act") and Section 51.803 of the Federal Communications Commission's ("FCC") rules, respectfully petitions the FCC to preempt on an expedited basis the jurisdiction of the Virginia State Corporation Commission ("Virginia Commission") and to arbitrate an interconnection agreement between Cox and Verizon Virginia, Inc. ("VZ-VA").[1] The Virginia Commission has refused to act on Cox's request for state arbitration of disputes concerning the interconnection agreement

[1] Being filed contemporaneously herewith is Cox's Motion for Combination of Petitions for Hearing which requests the FCC to establish a combined proceeding to hear this pleading and the arbitration petition filed by WorldCom, Inc. on October 26, 2000.

between Cox and VZ-VA pursuant to Section 252(b) of the Act.[2] Cox accordingly requests that the FCC expeditiously assume jurisdiction over and arbitrate these interconnection disputes.

I. BACKGROUND

Cox and VZ-VA first entered into an interconnection agreement (the "Initial Agreement") for Virginia in February of 1997.[3] After the expiration of the Initial Agreement's term in July of 1999, the parties began negotiations with the intent of entering into a renewal (the "Renewal Agreement") of the Initial Agreement. See the attached Affidavit of Jill Butler, appended as Exhibit 2. Throughout the course of the negotiations, the parties have continued to operate under the Initial Agreement pursuant to a provision that keeps its terms in effect until a successor agreement can be executed.

In February of 2000, it became necessary for Cox to reinitiate negotiations pursuant to *Armstrong Communications Inc.'s Petition for Reconsideration in DA 98-88*, 976 FCC 871 (1998). This action was taken when VZ-VA failed to provide sufficient resources and support to complete the Renewal Agreement within the deadline established by Cox's initial request.

In the second round of negotiations, the parties were unable to agree on mutually-acceptable language for a Renewal Agreement. When this impasse was reached, Cox

[2] By Order of Dismissal, dated November 1, 2000, in Case No. PUC000212 ("Virginia Order", appended hereto as Exhibit 1), the Virginia Commission dismissed Cox's petition for state arbitration of the interconnection agreement between Cox and VZ-VA.

[3] The parties to the Initial Agreement were Cox and Bell Atlantic-Virginia, Inc. ("BA-VA"). BA-VA subsequently changed its name to Verizon Virginia, Inc. The Certificates of Public Convenience and Necessity previously issued to BA-VA were cancelled and re-issued to VZ-VA pursuant to the Virginia Commission's Order of August 4, 2000, in Case No. PUC000217. This action followed the Virginia Commission's approval of the merger of Bell Atlantic Corporation and GTE Corporation by its Order of November 29, 1999, in Case No. PUC990100.

then filed a pleading with the Virginia Commission on July 27, 2000, conditionally seeking state arbitration of the interconnection dispute, pursuant to Section 252(b)(1) of the Act and Virginia law.

II. THE FCC SHOULD PREEMPT STATE JURISDICTION

Before seeking state arbitration, Cox was cognizant of the Virginia Commission's recent decisions in *In Re: Petition of Cavalier Telephone, LLC*, Case No. PUC990191 (June 15, 2000) (the "Cavalier Order") and *In Re: Petition of Focal Communications Corporation of Virginia*, Case No. PUC000079 (July 19, 2000) (the "Focal Order"). In these orders, the Virginia Commission held that it might waive the state's constitutional immunity by conducting arbitration proceedings pursuant to federal law. Cox thus understood that the Virginia Commission intended to conduct its interconnection agreement arbitration proceedings strictly under Virginia law and not under the Act.

However, Cox believed that its arbitration with VZ-VA should be conducted pursuant to the requirements of the Act so that the Renewal Agreement would comply with the broadest possible spectrum of requirements, both state and federal. Cox thus hoped to proceed with state arbitration by the Virginia Commission in accordance with the national provisions for interconnection agreement arbitrations established by the Act. This hope rested on Cox's preference for a single arbitration that would determine both state and federal rights and obligations, and result in a single, unified interconnection agreement.

In seeking state arbitration, Cox was therefore forced to file a pleading seeking alternative relief. First, Cox sought a declaratory judgment from the Virginia

Commission. In this request, Cox asked the Virginia Commission to reconsider the Cavalier Order and the Focal Order and to conclude that arbitration proceedings between Cox and VZ-VA would be conducted under federal law. On condition that the Virginia Commission was inclined to issue such a declaratory judgment, Cox then petitioned for arbitration of the Renewal Agreement. If the Virginia Commission were not so inclined, then Cox sought the dismissal of its pleading in order to seek arbitration by the FCC.

In responding to Cox's pleading, the Virginia Commission stated:

> The Commission finds that it cannot rule on the declaratory relief sought by Cox as such ruling might be considered an exercise of jurisdiction under the Act and, therefore, a waiver of the Commonwealth's sovereign immunity.[4]

In light of this holding, the Virginia Commission stated:

> Therefore, we will grant Cox's alternative request to dismiss this Petition so that it may proceed before the FCC.[5]

The Virginia Commission has failed to act to carry out its responsibilities under Section 252(e) of the Act in resolving through arbitration the issues that divide Cox and VZ-VA relating to a Renewal Agreement. Based upon its own clear language quoted above, the Virginia Commission has refused to act on Cox's state arbitration petition because Cox is unable to accept a resolution that complied only with state, not federal, law. Having determined that it will not carry out its duties assigned by the Act, the

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[4] Virginia Order, p. 3.

[5] Id, p. 5. Likewise, the Virginia Commission issued a similar order in connection with AT&T's request for arbitration under the Act. *See*, Order, dated November 22, 2000, in *Petition of AT&T Communications of Virginia, Inc., TCG Virginia, Inc. and National Telecom Corp. for declaratory judgment and Application of AT&T Communications of Virginia, Inc., TCG Virginia, Inc., ACC National Telecom. Corp., MediaOne of Virginia, and MediaOne Telecommunications of Virginia, Inc. forArbitration of Interconnection Rates,*

Virginia Commission dismissed Cox's pleading. As the Virginia Commission noted, it took this step so that Cox "may proceed before the FCC."

The FCC's mandate under Section 252(e)(5) is clear in this case. Congress contemplated this very situation by directing the FCC to act in the state's stead to carry out the duties assigned under Section 252 of the Act. Cox accordingly urges the FCC to issue a ruling preempting the jurisdiction of the Virginia Commission for purposes of arbitrating a Renewal Agreement between Cox and VZ-VA.

III. THE FCC SHOULD ARBITRATE

To date, Cox and VZ-VA have reached agreement on most of the technical terms and conditions but have been unable to reach agreement on every provision deemed by one or both parties to be necessary for inclusion in the Renewal Agreement. Cox seeks the FCC's arbitration of the unresolved issues remaining between the parties ("Disputed Issues"). It further notes there are certain unresolved issues ("Open Issues") that may ripen into disputes if the parties fail to reach agreement on the specific wording of the language needed to resolve them. If an Open Issue ripens into a Disputed Issue, Cox reserves the right to amend this pleading to include such an issue.

Cox requests that the FCC conduct a hearing to resolve the Disputed Issues and any Open Issue that ripens into a Disputed Issue. With respect to the procedures that should govern this hearing, Cox urges the FCC to adopt the guidelines recommended in its Motion for Combination of Arbitration Petitions for Hearing being filed contemporaneously herewith. Cox will continue to negotiate with VZ-VA over the

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Terms and Conditions, and Related Arrangements with Verizon-Virginia, Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996, PUC000261 and PUC09000282.

Disputed and Open Issues throughout the arbitration process, and Cox will keep the FCC informed about any progress that is made or any impasse that is reached.

For the FCC's convenience, this Petition for Preemption and Arbitration includes the following five exhibits:

1. A summary (the "Summary-Disputed Issues") (Exhibit 3) setting forth a statement of each Disputed Issue about which the parties have thus far been unable to negotiate agreed-upon wording. The positions of the parties on Disputed Issues appear to Cox to be so far apart as to suggest that no agreement can be reached absent FCC resolution. The Summary-Disputed Issues also sets forth the language proposed by each party to deal with the issue and the respective positions of each party.

2. VZ-VA's stand-alone, non-severable Intercarrier Compensation Proposal (Exhibit 4) that has been rejected by Cox. It provides alternative language to the original proposal offered by VZ-VA that was also unacceptable to Cox. Both the original proposal and this alternative language raise Disputed Issues.

3. A table (the "Table-Open Issues") (Exhibit 5) setting forth a statement of each Open Issue that has thus far not been resolved by the parties during negotiations but upon which Cox believes the parties can reach agreement. The Table-Open Issues sets forth the language proposed by each party to deal with the issue.

4. The contract language (the "Cox Interconnection Agreement") (Exhibit 6) that represents those provisions that have been agreed to by the parties on the date of filing and the wording proposed by Cox for those provisions presenting either Open or Disputed Issues at this time.

5. The expert testimony of Professor Francis R. Collins, Ph.D., supports the position of Cox on ten of the Disputed Issues (Exhibit 7). This testimony does not address Cox Issue 11, which is strictly legal in nature.

As the Cox Interconnection Agreement, the Summary-Disputed Issues and the Table-Open Issues make clear, the parties have reached agreement on a substantial number of issues. At this time, Cox is not requesting the Commission to take any action with respect to Open Issues. In the event that an open provision is not resolved by the parties, Cox would reserve the right to amend this Petition for Preemption and Arbitration, to provide supporting information, and to seek the FCC's resolution of the disputed provision. Such supporting information may include supplementary expert testimony filed by Professor Collins.[6]

A. THE DISPUTED ISSUES

The Disputed Issues, contained in the Summary-Disputed Issues, are discussed below issue-by-issue. To the extent that categorization of the Disputed Issues is helpful, most of the issues can be assigned to one or more of four general problem areas. First, VZ-VA attempts in some instances to impose on Cox an obligation that is only imposed by the Act on an incumbent local exchange carrier ("ILEC"), such as VZ-VA, and may not be imposed on Cox by an ILEC or a state commission. Second, VZ-VA seeks in some instances to obtain Cox's waiver of a right that the Act affords to a competitive local exchange carrier ("CLEC"), such as Cox. Third, VZ-VA seeks to avoid in some

[6] Pursuant to 47 U.S.C. § 252(b)(2)(A)(1)(ii), the Summary-Disputed Issues and the Table-Open Issues contain Cox's representation as to the latest language proposed by each party to resolve each issue. Cox has made a good faith effort to accurately record the language proposed by VZ-VA on these points.

instances obligations imposed on ILECs by the Act. And fourth, VZ-VA seeks in some instances to assume authority to dictate Cox's behavior that is not granted or permitted by the Act. While Cox has not attempted to place each of the Disputed Issues into one of these four categories, these are themes that weave through the fabric of the issues.

1. VZ-VA MAY NOT, THROUGH ITS DESIGNATIONS OF INTERCONNECTION POINTS OR BY DISCOUNTING THE COMPENSATION IT OWES COX, REQUIRE COX TO PAY FOR VZ-VA'S DELIVERY OF VZ-VA'S TRAFFIC TO COX'S NETWORK.

The first Disputed Issue involves the costs incurred by VZ-VA when it delivers traffic to Cox's network. This issue underscores the importance of utilizing the nationwide switched network in a manner that maximizes effectiveness and efficiency for all carriers to the benefit of all customers, rather than forcing competitors to build duplicative and wasteful facilities so that VZ-VA's costs alone are reduced. The "geographically relevant interconnection points" proposed by VZ-VA represent an attempt to limit the transportation costs that VZ-VA would bear in delivering its traffic to Cox. Indeed, under VZ-VA's proposal, Cox would inappropriately bear the costs of the facilities used in the delivery of such traffic to Cox's network. VZ-VA thus proposes to limit its costs when delivering traffic to Cox.

As explained by paragraph 209 of the First Report & Order, "Section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or less efficient interconnection points."[7] Cox, while not required to do so, has agreed to establish multiple Interconnection Points

[7] First Report & Order, ¶ 209.

("IPs") at the VZ-VA switches where Cox interconnects, thus obligating Cox to hand off its traffic to VZ-VA at VZ-VA's doorstep. By contrast, VZ-VA insists that it should be permitted, by its imposition of "geographically relevant" interconnection points, to hand off its traffic to Cox somewhere well within VZ-VA's network, e.g., far from Cox's doorstep, or, alternatively, to force Cox to discount the compensation rate that is owed by VZ-VA for such traffic. Cox bears the costs of all the facilities used in the door-to-door delivery of its traffic, and believes that VZ-VA must do the same.

VZ-VA's proposed language would shift the expense of transporting traffic away from VZ-VA and toward Cox, notwithstanding the preference under the Act for the terminating carrier to bear such expense and to be compensated by the originating carrier. A not too subtle distinction exists between the level of costs that would be borne by each party for transporting this traffic. The cost of such transport through VZ-VA's existing facilities is clearly less dear than the cost of Cox's constructing new facilities to handle this traffic. The Renewal Agreement should reflect that Cox and VZ-VA are in a co-carrier relationship.

The VZ-VA proposal also would unnecessarily interfere with Cox's ability to engineer its system to minimize Cox's costs of providing service to its customers. By contrast, Cox's proposal leaves each party free to engineer its own facilities to best serve its customers' needs at the lowest possible cost. It recognizes that sound engineering practice dictates that the parties cooperate, through bilateral discussion, in selecting interconnection points that are fair to both in view of each party's present facilities as well as those to be acquired in the near term. Moreover, each party is fairly compensated

for the transport and termination of the traffic originated by the other. *See also*, Prof. Collins' Testimony (Exhibit 7), at pp. 6-8.

Cox urges the FCC to adopt Cox's proposal to resolve this issue. The FCC should approve the contract language proposed by Cox at Section 1of the Summary-Disputed Issues (Exhibit 3).

2. VZ-VA MAY NOT REQUIRE THAT COX ELIMINATE ITS MILEAGE-SENSITIVE RATE ELEMENT AS A COMPONENT OF ITS ENTRANCE FACILITIES RATE.

This Disputed Issue is similar to the one set out above. It represents another attempt by VZ-VA to shift the cost of transporting traffic from VZ-VA to Cox. Under the VZ-VA proposal, Cox would be precluded from charging a mileage-sensitive rate element for entrance facilities.

In its First Report & Order at ¶ 553,[8] the FCC states: "New entrants will request interconnection pursuant to section 251(c)(2) for the purpose of exchanging traffic with incumbent LECs. In these situations, the incumbent and the new entrant are co-carriers and each gains value from the interconnection arrangement. Under these circumstances, it is reasonable to require each party to bear a reasonable portion of the economic costs of the arrangement." (Emphasis Added.) The proposal by VZ-VA to limit Cox's charges for entrance facilities subverts the Act and the FCC's rules. In addition to Cox's paying all the costs to deliver Cox's traffic to all of VZ-VA's IPs, VZ-VA proposes that Cox pay VZ-VA's reasonable costs for VZ-VA's transport of VZ-VA's traffic to Cox's IPs (by virtue of Cox providing a discount from its tariffed transport rates). VZ-VA attempts to

defend its proposal on the basis that there are differences in the parties' network architecture. VZ-VA's proposal actually tilts the relevant cost structures against Cox since it would create discrimination. VZ-VA should not be permitted to impose costs on Cox that it is not obligated to pay, thereby leading to a discriminatory result. *See also*, Prof. Collins' Testimony (Exhibit 7), at pp.8-9.

VZ-VA's unbalancing of the reasonable apportionment of costs should be rejected by the FCC. The FCC should approve the contract language proposed by Cox at Section 2 of the Summary-Disputed Issues (Exhibit 3).

3. 47 U.S.C. § 251(C)(6) AND 47 C.F.R. § 51.223(A) DO NOT PERMIT VZ-VA TO COMPEL COX TO FURNISH VZ-VA COLLOCATION AT COX FACILITIES IN THE SAME MANNER THAT VZ-VA, AS AN ILEC, IS COMPELLED TO FURNISH COX SUCH COLLOCATION AT VZ-VA FACILITIES.

Section 251(c)(6) of the Act imposes only upon ILECs the obligation to permit physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the ILEC. Although Section 251(h) of the Act empowers the FCC to rule that a LEC is to be treated as an ILEC under certain circumstances, the FCC has not done so – nor could it do so -- under Cox's circumstances. Section 51.223 of the FCC's rules states: "A state may not impose the obligations set forth in section 251(h)(1) of the Act, unless the [FCC] issues an order declaring that such LECs or classes or categories of LECs should be treated as incumbent

[8] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1966, First Report and* Order, FCC 96-325, CC Docket No. 96-98 (Released August 8, 1996), 11 FCC Rcd. 15499 (1996).

LECs."[9] In the absence of such an FCC ruling, a CLEC cannot be forced to comply with the physical collocation obligation imposed on ILECs by the Act. Congress saw fit to grant a federal right to competitors of the incumbents, and only such competitors, to gain physical collocation in the incumbents' facilities because of the necessity that competitors interconnect with the facilities of the incumbents.

Cox recognizes its general duty to interconnect, set out at Section 251(a)(1) of the Act, with the facilities or equipment of other carriers. Methods other than physical collocation are available by which such interconnection can be facilitated. Cox has offered to provide VZ-VA leased entrance facilities as a convenient means to accomplish such interconnection. Additionally, the parties have agreed to install mid-span meets as another method of interconnection. *See also*, Prof. Collins' Testimony (Exhibit 7), at pp. 9-11.

For these reasons, the FCC should reject VZ-VA's demand for reciprocity in physical collocation obligations. The FCC should approve the contract language proposed by Cox at Section 3 of the Summary-Disputed Issues (Exhibit 3).

4. SECTION 251(C)(2) OF THE ACT DOES NOT PERMIT VZ-VA TO DICTATE THE VOLUME OF TRAFFIC ON A TRUNK GROUP USED BY COX TO SEND TRAFFIC TO A VZ-VA TANDEM SWITCH FOR TERMINATION TO A VZ-VA END OFFICE.

Expressing concern about exhausting its tandem switching capability, VZ-VA has set out to limit the volumes of Cox's traffic routed to VZ-VA tandem switches. VZ-VA proposes that Cox be compelled to establish trunks directly to VZ-VA end offices at any time that such traffic exceeds certain modest levels. However, Section 251(c)(2) makes

[9] 47 CFR §51.223.

clear that Cox may choose its points of interconnection. Further, the FCC supports the CLEC's choosing those points of interconnection (at the ILEC's tandem or end office) based on the CLEC's own efficiency (*First Report & Order, paragraph 209)*. Cox does not agree with VZ-VA's assertion that Cox's traffic through VZ-VA's tandem switches contributes in any significant way to capacity exhaust. Nonetheless, Cox has proposed a limitation of the amount of traffic it sends to VZ-VA end offices by way of a VZ-VA tandem.

Cox has offered, as an accommodation to VZ-VA's concerns regarding tandem utilization, a moderate threshold that is focused on the volume of three DS-1s (which equals 72 separate voice channels), above which Cox would agree to implement direct-end office trunking. VZ-VA proposes the exceedingly low threshold for such direct trunking of a single DS-1 (24 voice channels). If any threshold for direct-end office trunking is deemed necessary by the FCC, Cox advocates a higher trigger than that proposed by VZ-VA because the economies generated by each company differ widely. VZ-VA generates huge economies of scale due to the magnitude of its facilities. Cox is unable to achieve the lower costs and efficiencies that attend VZ-VA's ubiquitous operations.

Specifically, the trigger used internally by VZ-VA when deciding to put in direct-end office trunking within its own network should not apply to Cox because of the wide disparity in the two parties' costs. Any trigger applied to Cox must take into account the significantly higher cost experienced by Cox, when compared to VZ-VA's economy of scale, in building or acquiring facilities between Cox's switches and VZ-VA's end

offices. Cox and most carriers ordinarily construct or acquire facilities packaged at the DS-3 level (28 DS-1s or 672 voice channels) when the volume of traffic justifies engineering a direct end-office interconnection. It would be highly wasteful to devote such facilities to carrying only one DS-1 level of traffic, as proposed by VZ-VA. *See also*, Prof. Collins' Testimony (Exhibit 7), at pp. 11-14.

Therefore, Cox requests that the FCC not override the Act and the FCC's First Report and Order by adopting VZ-VA's proposal. Instead, if the FCC perceives a need for such a trigger, it should establish a minimum of three DS-1s as the threshold for compulsory direct end-office trunking. The FCC should approve the contract language proposed by Cox at Section 4 of the Summary-Disputed Issues (Exhibit 3).

5. VZ-VA MAY NOT BE PERMITTED TO TREAT DIAL-UP CALLS TO INTERNET SERVICE PROVIDERS ("ISPs") AS NON-COMPENSABLE TRAFFIC FOR PURPOSES OF RECIPROCAL COMPENSATION; VZ-VA MAY NOT IMPOSE INFEASIBLE METHODS FOR DETERMINING TOLL VERSUS LOCAL TRAFFIC.

Dial-up calls to ISPs should be treated as local traffic for purposes of reciprocal compensation. The carrier to which such traffic is delivered still incurs the cost of routing such traffic through its network and terminating it to the ISP, and such terminating costs are still avoided by the carrier delivering such traffic. All traffic handed-off between LECs must be compensated either as access or as local, yet VZ-VA asserts that it can assign this traffic to a third, non-compensable category. The Virginia Commission has previously ruled that ISP traffic is subject to reciprocal compensation in the proceeding brought by Cox against VZ-VA, VA SCC Case No. PUC970069, issued October 24, 1997. Additionally, in a decision released March 24, 2000, the U.S. Court of Appeals for

the D.C. Circuit remanded the FCC's preliminary holding in its Declaratory Ruling issued February 26, 1999, that ISP was of mixed jurisdiction and possibly interstate in nature.

In a related issue, VZ-VA proposes that the parties use an infeasible method to determine whether a given call exchanged between the parties is local or toll, i.e., a comparison is to be made between the originating and terminating "points" of the call. Cox's proposal to compare the originating and terminating NXX codes remains the only means available, except for outright guessing, to determine the jurisdiction of calls for billing purposes. As such, Cox's proposal is the standard means applied throughout the telecommunications industry. *See also*, Prof. Collins' Testimony (Exhibit 7), at pp. 14-15.

The FCC should rule that ISP-bound calls must be treated as local traffic for billing purposes and that the determination of the jurisdiction of all calls exchanged should be based on the originating and terminating NXX codes. The FCC should approve the contract language proposed by Cox at Section 5 of the Summary-Disputed Issues (Exhibit 3).

6. VZ-VA MAY NOT REQUIRE THAT COX ENGINEER AND/OR FORECAST VZ-VA'S TRUNK GROUPS.

VZ-VA seeks to force Cox to forecast VZ-VA's outbound traffic, which would put Cox in the posture of projecting how much traffic originated by VZ-VA will be sent to Cox for termination. One party cannot shirk its responsibilities and unilaterally impose that burden upon the other. Traffic forecasting is a mutual process. In negotiations, however, VZ-VA has steadfastly refused to forecast its own traffic that will be sent to

Cox, even though Cox has no access to the necessary data to make this determination. VZ-VA has failed to furnish Cox with a compelling reason why Cox should assume VZ-VA's obligations and engineering costs to make such forecasts. Cox is aware that VZ-VA forecast VZ-VA traffic bound for GTE in Virginia and did not require GTE to forecast such traffic. It remains a mystery to Cox why VZ-VA now eschews this forecasting practice and takes a stance with regard to Cox that is at variance with industry practice. *See also*, Prof. Collins' Testimony (Exhibit 7), at pp. 15-18.

The FCC should not permit VZ-VA to require Cox to provide a forecast of VZ-VA's own traffic. The FCC should approve the contract language proposed by Cox at Section 6 of the Summary-Disputed Issues (Exhibit 3).

7. VZ-VA MAY NOT MONITOR OR AUDIT COX'S ACCESS TO AND USE OF CUSTOMER PROPRIETY NETWORK INFORMATION MADE AVAILABLE TO COX THROUGH THE INTERCONNECTION AGREEMENT.

As Cox understands VZ-VA's position on this Disputed Issue, VZ-VA seems concerned with its liability in a civil action arising from its grant to Cox of access to customer proprietary network information ("CPNI") and wishes to limit this liability through monitoring and auditing of Cox's activities. This is a specious argument, which might be designed to cloak VZ-VA's proprietary interest in how Cox uses CPNI. The FCC and the Virginia Commission are the appropriate authorities to monitor and enforce CPNI protections. VZ-VA should not usurp their authority and act as Cox's regulator. VZ-VA's proposal begs the question of why VZ-VA is so committed to taking extra steps

and bearing the additional expense to make sure that Cox is complying with Cox's statutory and contractual CPNI obligations for the expressed purpose of affording VZ-VA greater legal security.

Cox is bound both by federal law and by the agreed terms of the Renewal Agreement to protect the confidentiality of CPNI. Cox would be liable for penalties under federal law for any violation of this confidentiality. Additionally, Cox has undertaken to indemnify VZ-VA for any loss that it may incur due to Cox's failure to protect such information. It remains completely unclear to Cox why VZ-VA fears being drawn into a legal controversy over Cox's behavior and why VZ-VA deems indemnification an inadequate remedy in the unlikely event that VZ-VA is held accountable for the actions of Cox. *See also*, Prof. Collins' Testimony (Exhibit 7), at pp. 18-19.

Cox urges the FCC to accept Cox's proposal for resolving this Disputed Issue. The FCC should approve the contract language proposed by Cox at Section 7 of the Summary-Disputed Issues (Exhibit 3).

8. VZ-VA MAY NOT PLACE CAPS ON THE RATES AND CHARGES THAT COX MAY ASSESS FOR ITS SERVICES, FACILITIES AND ARRANGEMENTS.

VZ-VA's attempt to place caps on the charges that Cox may assess for its services, facilities and arrangements is contrary to that permitted by the Act and the FCC's rules. The two parties may mutually agree to cap rates and charges, but VZ-VA is attempting to impose such caps unilaterally, thereby usurping the authority of regulatory

bodies over rates and charges. *See also*, Prof. Collins' Testimony (Exhibit 7), at pp. 19-20.

The FCC should reject VZ-VA's proposal and approve the contract language proposed by Cox at Section 8of the Summary-Disputed Issues (Exhibit 3).

9. VZ-VA MAY NOT LAWFULLY IMPOSE A STATEMENT OF GENERALLY AVAILABLE TERMS AS A DEFAULT MECHANISM UPON THE TERMINATION OF THE RENEWAL AGREEMENT BEING NEGOTIATED BY THE PARTIES.

Section 252(f) of the Act establishes the Statement of Generally Available Terms ("SGAT") as a pre-fabricated, template agreement available for those CLECs who choose not to pursue interconnection negotiations and arbitrations with an ILEC. If a CLEC finds an SGAT satisfactory in fulfilling its business needs, then that document can be adopted by the CLEC without expending the time and costs of negotiating and arbitrating a "custom-designed" interconnection agreement. An SGAT is not designed, nor was it ever intended, to serve as a default mechanism upon the termination of a negotiated interconnection agreement. VZ-VA has not filed an SGAT in Virginia but rather proposes in its contract language that an SGAT may be filed with and approved by the Virginia Commission sometime in the future. It is VZ-VA's proposal that, if an SGAT is filed and approved, Cox would be bound by its terms and conditions upon the Renewal Agreement's expiration.

VZ-VA appears to understand Cox's desire to enter into a "custom-designed" agreement. However, VZ-VA appears not to understand Cox's refusal to adopt, in advance, a future SGAT. This threat to apply a future SGAT in mid-stream at the termination of the Renewal Agreement seems intended by VZ-VA to force Cox into an

unequal bargaining position during the next round of negotiations. Cox has agreed to act reasonably and with dispatch during the next negotiations and finds VZ-VA's threat of applying a future SGAT to be inappropriate. *See also*, Prof. Collins' Testimony (Exhibit 7), at pp. 20-22.

The FCC should reject VZ-VA's strong-arm attempts to force Cox to adopt an unknown and un-negotiated sequel to its next agreement. The holdover provisions of the agreement should be spelled out clearly for the parties and not left open to chance. VZ-VA has unilateral discretion to file an SGAT and to submit for approval any terms and conditions that it wishes. The FCC should approve the contract language proposed by Cox at Section 9 of the Summary-Disputed Issues (Exhibit 3).

10. VZ-VA MAY NOT SUMMARILY TERMINATE COX'S ACCESS TO OSS FOR COX'S ALLEGED FAILURE TO CURE ITS BREACH OF SCHEDULE 11.7 OR SECTIONS 1.5 OR 1.6.

This Disputed Issue is yet another example of a VZ-VA proposal that is Draconian, overbroad and overreaching. Cox's access to Operational Support Systems ("OSSs") could be terminated for perceived abuses without regard to the negative impact on Cox's customers. Cox has sufficient motivation to protect VZ-VA's OSSs without VZ-VA's need to resort to such dire remedies. The agreed language in the Renewal Agreement is replete with adequate remedies, allowing VZ-VA to protect its OSSs from interference, impairment, or other harms. *See also*, Prof. Collins' Testimony (Exhibit 7), at p. 22, concerning the termination remedies of §22.5 of the Interconnection Agreement.

This demand for excessively punitive remedies is another instance of VZ-VA's attempting to assert unilateral authority over a CLEC. This power grab is not permitted